

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6865 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SOMABHAI WD/O BAWAJI LAXMIRAM

Versus

STATE OF GUJARAT

Appearance:

MR JITENDRA M PATEL for Petitioners

Mr. V.B.Gharania, ASSTT. GOVERNMENT PLEADER for
Respondent No. 1

MR PV NANAVATI for Respondent No. 2, 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 27/11/98

ORAL JUDGEMENT

This petition has been filed for quashing the order dated 30th September, 1982 of the Deputy Collector, Bhavnagar and the order dated 15.4.85 of the Gujarat Revenue Tribunal at Annexures "E" and "F" respectively. In the year 1952, the land of survey

nos.2,111 and 133 was running in the name of Bavaji Laxmiram and Mayaram Bhaktiram. In the year 1954, Bavaji Laxmiram Bhaktiram died and mutation was effected by entry no 127 dated 13th April, 1955 in the name of the widow of Laxmiram Bhaktiram. The land of survey no. 111 was transferred by a sale deed dated 20th January, 1962 to the petitioner and entry no. 221 dated 17th October,1963 was made in favour of the petitioner no. 3. In the year 1981, proceedings under section 38 of the Barkhali Abolition Act initiated on the ground of breach of condition no. 8 of the said Act. The Deputy Collector, passed the order dated 30th September,1982 holding the land of survey no. 2 and 111 in the name of Laxmiram Bhaktiram and Mayaram being administrators of Thakor temple of village Abhrampur, transfer by a sale deed of that land as the owner and the sale transaction as illegal and void, forfeiting the land to Government under section 8 of the said Act.

2. Being aggrieved by the said order of the Deputy Collector, the petitioners preferred Revision Application No. TN.B.A. 1806/82 before the Gujarat Revenue Tribunal. The Tribunal by an order dated 15th April, 1985 confirmed the order of the Deputy Collector. Therefore, the petitioners have filed the present petition.

3. The learned counsel for the petitioners has submitted that the land of survey nos.2 and 111 belonged to the petitioners. Bawaji Laxmiram Bhaktiram died and therefore, the name of the present petitioner no. 1 widow of the deceased Bawaji Laxmiram Bhaktiram was mutated in his place in revenue papers. After coming into force of the Act, these lands have been entered in the names of the petitioner nos. 1 and 2 by entry no. 90 in the year 1952 in village form no. 6 (record of rights). Bawaji Laxmiram Bhaktiram has died in the year 1954 and thereafter by entry no. 127 dated 13.4.55 the petitioner no.1 has become the co-owner of this land as widow of deceased Laxmiram. After the sale of survey no.111, entry no.221 was made on 17.10.63 to the effect that Sombai widow of Bawaji Laxmiram owner and Mayaram Bhaktiram sold the land of survey no.101 admeasuring 5 acres and 6 gunthas and 5 acres 37 gunthas to the purchaser Raghavbhai Bhagwan by a sale deed no.214 dated 20th January, 1962 for Rs.2300/- and that entry was affected. Some order was passed by the Collector dated 13.4.70 for making entry in the village form in the name of Laxmiram and Mayaram. On the basis of that order, entry no.291 was made in the village form no. 6 on 30.4.70. On the basis of this entry, it appears that

some order was passed by the Collector Bhavnagar on 13.4.70 treating the land as the land of the Religious Institution and both Bawaji Laxmiram and Mayaram Bhaktiram were the administrators of the land. The Deputy Collector held the land as the land of the Institution in the proceedings initiated in the year 1981 under section 38 and that finding has been affirmed by the Tribunal.

5. The contention of the learned counsel for the petitioner is that the order dated 13.4.70 passed by the Collector, Bhavnagar has not been placed on record and that order was not within the knowledge of the petitioners nor it was passed in their presence. No notice has been issued in respect thereof. Without affording any reasonable opportunity, the order dated 13.4.70 was passed, but even then that order has not been placed on record by the department concerned before the Deputy Collector. In absence of that order, entry no.291 made on 30th April, 1970 is illegal and cannot be relied upon by the authorities concerned. Under the provisions of sections 91 and 92 of the Evidence Act, when the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, on evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document, itself or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions.

In the present case, some order dated 13.4.70 has been passed by the Collector but that order has not been placed on record. Only entry on the basis of that order has been produced and the contents of that order have not been brought on record by the department concerned. As such, it is a case where there is no evidence at all to prove that it is a property of Bawaji Laxmiram and Mayaram Institution. On the other hand, the petitioner nos. 1 and 2 have sold the land and the land has been entered in the name of petitioner no.3 as the owner of that land. Though it is mentioned in the order that the petitioner has not produced occupancy certificate, as such, it was presumed that it was the land of the Institution and not of those two persons as owners.

6. So far as the contention of the learned counsel for the petitioner is concerned, it appears that the order dated 13.4.70 has not been at all produced

before the lower authorities. Even not before this Court by the respondents. If the original order treating the land as the land of the Institution which has been claimed by the petitioners as the owners is not produced, the petitioners being claimants the owners, they are not required to obtain occupancy certificate under section 8 of the Act nor they are required to produce the same. The claim of the petitioners is that they are owners of the land and that land is not the land of the Institution. The second contention of the learned counsel for the petitioners is that the Deputy Collector was not competent to summarily evict the petitioners by summary proceedings under section 38 of the said Act, where there is a dispute regarding ownership of the property. Moreover, the alleged order of the Collector was passed after a period of 19 years. The proceedings cannot be initiated against the petitioners after a period of 19 years from the date of the sale deed. It is also submitted that the land of survey no. 111 was sold and the land of survey no. 2 was not at all sold to anybody. Even then the land of survey no. 2 has also been included in this order. It is also argued by the learned counsel for the petitioner that there is no provision in the Act that if the possession is illegal, the land will be forfeited to the State. At the most, the land could be reverted to the land owners, if the land has been transferred in breach of conditions of section 8 of that Act. Those facts have to be scrutinised and examined on the basis of the evidence. It is difficult to determine these facts without having sufficient evidence on record of this Court.

7. The learned Assistant Government Pleader is in agreement with the fact that the matter may be remanded to the Deputy Collector to decide the matter afresh after considering all the arguments and the department may be directed to place the original order dated 13.4.70 of the Collector on the record and the matter be decided after giving reasonable opportunity of hearing to the petitioners. The petitioners should be given an opportunity to raise all the contentions which they have raised in this petition and permissible under law before the Deputy Collector.

8. In the facts and circumstances of the case and in view of the concession made by the learned AGP, it would be just and proper to remand the matter to the authority concerned.

9. Accordingly, the petition is allowed. The impugned order dated 30.9.82 passed by the Deputy

Collector, Mahuva and the order dated 15.4.85 passed by the Gujarat Revenue Tribunal are quashed and set aside. The matter is remanded to the Deputy Collector, Mahuva with a direction to decide the matter afresh on merits and in accordance with law, after affording an opportunity of hearing to the petitioners. Rule is made absolute accordingly with no order as to costs.

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